CF0000059663

CrA 2821/98

(2)

XII-188/(Jail)
C.J.P.R.—5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 278 Name कलवंत

Father's name कदम सारथी

Residence श्रीरामपाल तालाब के पास Age 35 वर्ष
सरपुरा

Sentenced to श्रीमती निर्मला सिंह on 9-2-1998

Under section धारा 302 भा.द.वि. by

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It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 27-10-98

2 Date of which copy received

3 Date on which Appeal sent 30-10-98

4 Whether the prisoner wishes to be represented or not – Yes/No.

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No. 278 Name कलवंत उर्फ कदम सारथी

Continued in उपरी Jail

No. 699/पत्रा/98 दि dated 30-10-98 1998

Forwarded to the CHIEF JUDICIAL MAGISTRATE उपरी

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

विषय :- निर्णय प्रतिलिपि ।

जेल अधीक्षक
Superintendent-Central/Distt./Sub-Jail
जिला जेल दुर्ग

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Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. Dated 98

Forwarded to the

C.J.Magistrate

Date of receipt in Appliate Court

(P.T.O.)

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A No. 98 21/98 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

17-2-2006

Mrs. Kiran Jain, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

The appellant has preferred this appeal questioning legality of the judgment of conviction and order of sentence dated 9-2-1998 passed by the 6th Additional Sessions Judge, Durg, in Sessions Trial No.17/97, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that Shakun Bai (PW-1) lodged the report (Ex.P-1) in Police Station: Balod on 2nd October, 1996, to the effect that she along with her daughter Kum. Radha (since deceased) was in house, at about 5.30 p.m. accused Balwant came, she went to fetch water for Balwant and his daughter Radha also came out of the house enquiring as to who has come. At that time, Balwant caught hold of Radha by hand, took out a knife from his attire and attacked Radha with the knife on right side of stomach with intention to cause her death, as a result of which Radha fell down and received injuries on stomach & chest and blood started oozing out of the injuries. Balwant ran away with the knife. At that time, people collected and

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

took Radha to the hospital. Receiving this report, R.P. Agnihotri (PW-8), Assistant Sub Inspector, registered the case and left for the scene of occurrence. After giving notice (Ex.P-2) to the Panchas, the ASI prepared Panchnama (Ex.P-3) of the body of Radha. Site plan (Ex.P-4) of the place of occurrence was prepared by N.K. Yadav (PW-7), Patwari. During police custody, the accused gave memorandum (Ex.P-6) and in pursuance of that, one knife and one container of poison of the size of 100 milligrams were taken into possession under Ex.P-7. Blood stained soil and plain soil were taken into possession under Ex.P-8. Clothes were taken into possession under Ex.P-9. The Investigating Officer vide Ex.P-11A requested Dr. Mrs. Shashi Claudius (PW-6), Assistant Surgeon, Community Health Centre, Balod, for examination of Radha and after examining, he gave report Ex.P-11. Body of Radha was sent for post-mortem examination under Ex.P-12A to Community Health Centre, Balod, where Dr. Mrs. Shashi Claudius (PW-6) conducted post-mortem and prepared the post-mortem report (Ex.P-13). Recovered articles were sent to Forensic Science Laboratory, Raipur, from where the report (Ex.P-17) was received. Dying declaration (Ex.P-22) of the deceased was recorded by Executive Magistrate U.S. Agrawal.

After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Balod, who in turn committed the case to the Sessions Judge, Durg, from where learned 6th Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 11 witnesses. Statement of the accused was recorded under

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आदेश पत्रक

मामला क्रमांक Cr.A. No. 2821 सन् 200 98

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard Mrs. Kiran Jain, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Ravindra Agrawal, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of deceased Radha is not in dispute.

As far as involvement of the accused/appellant in committing the murder of Radha is concerned, learned counsel for the appellant argued that as the villagers levelled false charge on the accused regarding having illicit relations with his adopted daughter Radha which the accused could not tolerate, in the first instance, he consumed poison in order to commit suicide and thereafter, when he lost his sense, he committed the heinous crime. Therefore, there was no intention to cause the death of Radha, as such, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Additional Public Prosecutor with learned Panel Lawyer supported the trial Court judgment.

Shakun Bai (PW-1) is the mother of Radha. She has stated in her evidence that on 2nd October 1996 she along with Radha was at her residence, at about 5 p.m. accused Balwant came to their house and asked for water, she went to fetch water and her daughter came out enquiring as to who

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has come. When she was taking water, at that time, the accused took out a knife from his attire and attacked Radha on her back with the knife. Seeing this, her condition became precarious. As a result of the knife injury, her daughter fell down and seeing the above condition, she also fainted and thereafter, she does not know which side Balwant had gone. In cross-examination, defence has not been able to elicit any circumstance to make the evidence of this witness unreliable or untrustworthy.

Moreover, the knife in question was recovered at the instance of the accused and same was sent for chemical examination to the F.S.L., Raipur where it was found stained with blood. The accused himself made extra judicial confession (Ex.P-22) before the Executive Magistrate in which he admitted that he assaulted Radha with knife because, there was charge against him that he had illicit relations with Radha and on account of that she became pregnant. The above statement (Ex.P-22) has been proved by U.S. Agrawal (PW-11) that accused Balwant gave the above statement before him.

Therefore, based on the evidence of eyewitness Shakun Bai (PW-1), recovery of the weapon of offence which was found stained with blood and extra judicial confession made by the accused before Executive Magistrate U.S. Agrawal as also that the medical evidence corroborates the injuries sustained by the deceased, involvement of the accused in the crime in question is established.

As far as the offence committed by the accused is concerned, the argument advanced by learned counsel for the appellant is devoid of merit for the reason that Shakun Bai (PW-1) has clearly stated that on the fateful day, at about 5 p.m. the accused came with a knife and asked her to give him

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water, when she went to fetch water, the accused took out the knife from his attire and stabbed Radha in her chest, as a result of which she died instantaneously. Merely levelling charge by villagers that the accused had illicit relations with Radha, in any way, does not be a ground for provocation for the accused to assault Radha and commit her murder.

In the circumstances, we do not find illegality or infirmity in the judgment of the trial Court. The appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Consequently, M.(Cr.)P. No.3286/2004 stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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